

Senate Engrossed

**FILED**

**MICHELE REAGAN  
SECRETARY OF STATE**

State of Arizona  
Senate  
Fifty-third Legislature  
First Regular Session  
2017

**CHAPTER 218  
SENATE BILL 1175**

AN ACT

AMENDING SECTION 33-442, ARIZONA REVISED STATUTES; RELATING TO REAL ESTATE  
CONVEYANCES AND DEEDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 33-442, Arizona Revised Statutes, is amended to  
3 read:

4 33-442. Prohibition on transfer fees; exceptions; definitions

5 A. A provision in a declaration, A covenant or any other document  
6 relating to real property in this state is not binding or enforceable  
7 against the real property or against any subsequent owner, purchaser,  
8 lienholder or other claimant on the property if it purports to do both of  
9 the following:

10 1. Bind successors in title to the specified real property.

11 2. Obligate the transferee or transferor of all or part of the  
12 property to pay a fee or other charge to a declarant or a third person on  
13 transfer of an interest in the property or in consideration for permitting  
14 such a transfer. Regularly scheduled fees or charges shall not be  
15 considered payable on transfer of an interest if the fees or charges will  
16 be payable by the owner of the property regardless of whether or not the  
17 property is transferred, even if the obligation to pay does not commence  
18 until the trustee, declarant, builder or developer first conveys the  
19 property to a retail purchaser.

20 B. A transfer fee provision prescribed by subsection A OF THIS  
21 SECTION is unenforceable whether or not recorded and does not create a  
22 lien right and any lien purportedly arising out of an unenforceable  
23 provision prescribed by subsection A OF THIS SECTION is invalid and  
24 unenforceable.

25 C. This section does not apply to any of the following:

26 1. Any provision of a purchase contract, option, mortgage, security  
27 agreement, real property listing agreement or other agreement that  
28 obligates one party to the agreement to pay the other party as full or  
29 partial consideration for the agreement or for a waiver of rights under  
30 the agreement if the amount to be paid is:

31 (a) A loan assumption fee or similar fee charged by a lender that  
32 holds a lien on the property.

33 (b) A fee or commission paid to a licensed real estate broker for  
34 brokerage services rendered in connection with the transfer of the  
35 property for which the fee or commission is paid.

36 2. Any provision in a deed, memorandum or other document recorded  
37 for the purpose of providing record notice of an agreement prescribed in  
38 paragraph 1, subdivision (a) of this subsection.

39 3. Any provision of a document that requires payment of a fee or  
40 charge to an association to be used exclusively for the purpose authorized  
41 in the document if both of the following apply:

42 (a) The fee being charged touches and concerns the land.

1 (b) No portion of the charge or fee is required to be passed  
2 through to a third party or declarant designated or identifiable by  
3 description in the document or in another document that is referenced in  
4 the document unless the third party is authorized in the document to  
5 manage real property within the association or was part of an approved  
6 development plan.

7 4. Any rent, reimbursement, charge, fee or other amount payable by  
8 a lessee to a lessor under a lease, including any fee payable to the  
9 lessor for consenting to an assignment, sublease, encumbrance or transfer  
10 of the lease.

11 5. Any consideration payable to the holder of an option to purchase  
12 an interest in the real property or to the holder of a right of first  
13 refusal or first offer to purchase an interest in real property and paid  
14 for waiving, releasing or not exercising the option or right on transfer  
15 of the property to another person.

16 6. Any fee, charge, assessment, dues, contribution or other amount  
17 relating to the purchase or transfer of a club membership related to the  
18 real property owner by the transferor.

19 7. Any fee or charge that is imposed by a document and that is  
20 payable to a nonprofit corporation for the sole purpose of supporting  
21 recreational activities within the association.

22 8. Any fee, tax, assessment or other charge imposed by a  
23 governmental authority pursuant to applicable laws, ordinances or  
24 regulations.

25 9. Any consideration payable by the transferee to the transferor  
26 for the interest in real property being transferred including any  
27 subsequent additional consideration for the property payable by the  
28 transferee based on any subsequent appreciation, development or sale of  
29 the property.

30 D. Notwithstanding any provision in the document or purported lien,  
31 a transfer fee covenant or other document prescribed by subsection A OF  
32 THIS SECTION or a lien purporting to secure payment under a transfer fee  
33 covenant or document prescribed by subsection A OF THIS SECTION that is  
34 executed after ~~the effective date of this section~~ JULY 29, 2010 is not  
35 binding or enforceable. This section shall not be construed to imply that  
36 a transfer fee covenant or other document prescribed by subsection A OF  
37 THIS SECTION that is executed before ~~the effective date of this section~~  
38 JULY 29, 2010 is enforceable or valid.

39 E. For the purposes of this section:

40 1. "Association" means A NONPROFIT ORGANIZATION THAT IS QUALIFIED  
41 UNDER SECTION 501(c)(3) OR SECTION 501(c)(4) OF THE UNITED STATES INTERNAL  
42 REVENUE CODE OR a nonprofit mandatory membership organization that is  
43 created pursuant to a declaration, covenant or other applicable law and  
44 that is ~~comprised~~ COMPOSED of the owners of homes, condominiums,  
45 cooperatives or manufactured homes or any other interest in real property.

1           2. "Transfer" means the sale, gift, conveyance, assignment,  
2 inheritance or other transfer of an interest in real property located in  
3 this state.

4           Sec. 2. Legislative intent; clarifying language

5           The amendments in this act to section 33-442, Arizona Revised  
6 Statutes, are intended to be clarifying changes and are consistent with  
7 the legislature's intent when section 33-442, Arizona Revised Statutes was  
8 enacted.

9           Sec. 3. Retroactivity

10          This act applies retroactively to from and after July 28, 2010.

**APPROVED BY THE GOVERNOR APRIL 28, 2017.**

**FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 28, 2017.**



Passed the House April 20, 2017,

Passed the Senate February 13, 2017,

by the following vote: 50 Ayes,

by the following vote: 30 Ayes,

6 Nays, 3 Not Voting  
1 Vacant

0 Nays, 0 Not Voting

[Signature]  
Speaker of the House

[Signature]  
President of the Senate

[Signature]  
Chief Clerk of the House

[Signature]  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

24<sup>th</sup> day of April, 2017,

at 1:51 o'clock P. M.

[Signature]  
Secretary to the Governor

Approved this 28<sup>th</sup> day of

April, 2017,

at 1:17 o'clock P. M.

[Signature]  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 28 day of April, 2017,

at 4:43 o'clock P. M.

[Signature]  
Secretary of State

S.B. 1175